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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

PENN ENGINEERING AND MANUFACTURING CORP. a Delaware Company, Plaintiffs, vs. DONGGUAN FENGGANG PINCONN HARDWARE FACTORY, foreign entity, Defendant.	CASE NO. **COMPLAINT**

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Plaintiff PENN ENGINEERING AND MANUFACTURING CORP. ("PEM" or "Plaintiff"), by and through its counsel of record, the law firm of Dickinson Wright, PLLC, hereby files its Complaint against Defendant Dongguan Fenggang Pinconn Hardware Factory ("Defendant") and complain as follows:

INTRODUCTION

The International Fastener Expo is an event held annually at the Las Vegas Convention center in which approximately eight hundred and (850) manufacturers and distributors from more than thirty (30) countries promote, exhibit, and offer for sale fasteners, precision formed parts, fastener machinery and tooling, and other related products and services. Defendant, who has already been enjoined in the United States District Court, Eastern District of Pennsylvania, is exhibiting and offering products for sale which infringe upon Plaintiff's intellectual property.

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Accordingly, Plaintiff seeks injunctive relief and money damages (including, but not limited to, statutory damages), attorneys' fees, interest, and costs.

JURISDICTION AND VENUE

1. This is an action for statutory trademark infringement, false designation of origin, and unfair competition in violation of the Lanham Act, 15 U.S.C. § 1051, *et seq*.; for common law trademark infringement and unfair competition and for design patent infringement in violation of 35 U.S.C. § 1, *et seq*.

2. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1119 and 1121, and pursuant to 28 U.S.C. §§ 1331, 1338, and 1367, because this action presents questions arising under the trademark and patent laws of the United States to which Congress has granted exclusive subject matter jurisdiction to the federal courts. This Court has supplemental jurisdiction over Plaintiff's common law claims.

3. This Court has personal jurisdiction over Defendant Dongguan Fenggang Pinconn Hardware Factory ("Pinconn" or "Defendant") based upon the Defendant's infringing acts of importing, manufacturing, advertising, displaying, and offering for sale, and selling the infringing goods at the at the International Fastener Expo held from October 17-20, 2017, at the Las Vegas Convention Center, in Las Vegas, NV, and for making the same goods available online on the Defendant's website located at www.pinconn.com.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c), (d) and 1400(b) because the Defendant does business in Nevada, has committed acts of infringement in Nevada, and is subject to personal jurisdiction in Nevada.

THE PARTIES

5. Plaintiff Penn Engineering & Manufacturing Corp. ("PEM") is a Delaware corporation headquartered in Danboro, Pennsylvania. PEM is the industry leader in the design and manufacture of self-clinching fasteners.

6. Upon information and belief, Defendant Pinconn is a Chinese corporation with its principal place of business at Dongguan Fenggang Pinconn Hardware Factory, 2nd Floor, A

Building, Jinpeng Industrial Park, #96 Jincheng Road, Jingenghuang Zone, Fenggang Town, Dongguan City, Guangdong Province, P.R. China. Upon information and belief Defendant manufactures a variety of fasteners, which it imports, sells, and offers for sale within the United States.

GENERAL ALLEGATIONS

BACKGROUND BETWEEN PLAINTIFF AND DEFENDANT

7. On November 23, 2015, Plaintiff PEM filed a complaint in the United States District Court for the Eastern District of Pennsylvania against Pemco Hardware, Inc., Dongguan Fenggang Pemco Hardware Factory, and Shenzhen Pemco Fastening Systems Co. Ltd. ("The Pemco Action"). *See* Case 2:15-cv-06277-GJP. The complaint alleged numerous violations of federal statutory law and common law for trademark and patent infringement and unfair competition stemming from Defendants' sale of products that are substantially similar to products that PEM has trademarked and patented. *Id.*

8. That same day, PEM filed a motion for preliminary injunction, asking the Court to temporarily enjoin Pemco from continuing to market and sell the infringing products. Despite service of the summons, complaint, and motion, Pemco failed to make an appearance in the case. An order granting Plaintiff's motion for preliminary injunction was filed on March 9, 2016 a true and correct copy of which is attached hereto as ***Exhibit 1***.

9. Upon information and belief, the Defendant changed its name to avoid the Pennsylvania District Court's Order. As evidenced from the Website, the Defendant and "Pemco" are the same infringing business. Among other things, the online brochure identifies the business as "Pemco Fastening Systems"; the "Company News" page identifies the business as "Pemco" and "Pemco Hardware"; photographs of signage on the website read, "Pemco," "Pemco Hardware," and "Pemco Fastening Systems"; numerous pages have headers that read, "PEMCO," "PEMCO Fastening Systems," and "Shenzhen Pemco Fastening Systems Co., Ltd."; numerous pages have watermarks reading, "PEMCO," "www.pemcomfg.com," "PEMKU.com," and "Shenzhen Pemco Fastening Systems Co., Ltd."; and every page has a footer listing the

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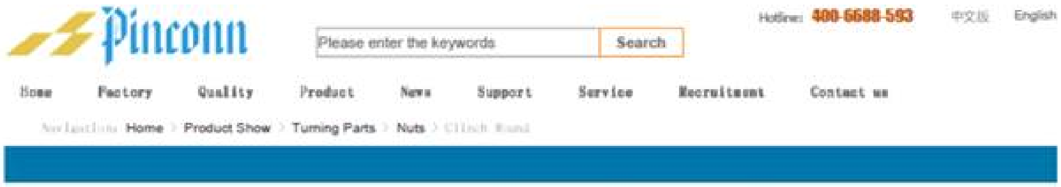
address, telephone number and fax number for Pemco. ***See generally Exhibits* 2, 5-6**.

10. The domain name, www.pinconn.com, is registered and owned by Dongguan Fenggang Pemco Hardware Factory attached hereto as ***Exhibit 3***.

11. The website logos are virtually identical, as can be seen from this website page header, which appears on numerous pages of Pinconn's website. *Id.*


Pinconn
Please enter the keywords
Search
Hotline: 400-6688-593
中文版
English
Home
Factory
Quality
Product
News
Support
Service
Recruitment
Contact us
Home
Product Show
Turning Parts
Nuts

压铆螺母 SELF-CLINCHING NUTS
PEMCO

HISTORY OF PENN ENGINEERING AND MANUFACTURING CORPORATION

12. PEM was founded in 1942 by K.A. Swanstrom, who invented a revolutionary technique to attach "self-clinching fasteners" to pieces of sheet metal. A "self-clinching fastener" is any device, usually threaded, that, when pressed into a softer metal panel, displaces the panel material around the mounting hole, causing the fastener to hold permanently into the sheet. A clinching ring, knurl, ribs, or hex head prevents the fastener from rotating in the panel. Thus, self-clinching fasteners become a permanent part of the panel, chassis, bracket, or other item into which they are installed. Self-clinching fasteners can be installed in sheet metal using standard tools, and do not require soldering, welding, or the creation of a threaded screw-hole in the sheet metal itself.

13. When Mr. Swanstrom founded PEM, the company initially sold only one product: a self-clinching nut that was used in an electronic device. PEM has expanded considerably in the 75 years since it was founded and now sells more than 20 different types of self-clinching fasteners in thousands of sizes and variations.

14. PEM's self-clinching fasteners are used in a wide variety of products, including computer equipment, automobiles, airplanes, business machinery, and farm equipment.

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15. PEM sells its products through a global network of authorized distributors. These distributors sell PEM brand fasteners to a variety of customers, including suppliers of finished sheet metal to original equipment manufacturers ("OEMs"). These OEMs include leading manufacturers of electronic and computer equipment.

16. Due to the high quality of its products, its history of innovation, and its commitment to customer service, PEM is recognized as the industry leader in the market for fasteners. PEM's fasteners are considered to be superior to those of its competitors, and PEM has developed and enjoys considerable goodwill. As a result, certain OEMs require that their suppliers use only PEM brand fasteners in their products.

17. Over the past 75 years, PEM has developed a reputation for designing, manufacturing and selling only the highest quality fastener products. PEM exercises extensive quality control at its manufacturing plants and has a manufacturing strategy of defect prevention rather than defect detection. PEM uses statistical tools throughout its manufacturing processes to monitor the performance and to assure effective quality control of each process step. If a non-conforming situation arises, it is resolved immediately with the use of appropriate quality assurance tools.

18. PEM's fastener products and fastener installation equipment are sold throughout the entire world through an extensive network of distributors in the U.S. and dozens of foreign countries. PEM currently has approximately 64 distributors in 47 countries.

19. PEM's fastener products and fastener installation equipment are also advertised, promoted, and sold on its extensive interactive website. PEM has operated such a website since as early as 1996.

20. PEM's fastener products and fastener installation equipment are also advertised, promoted, and sold at national and international trade shows including the following: Pacific Design & Manufacturing; FABTECH; Composites Europe; mtex; MIDEST; Fastener Expo; and Manufacturing Indonesia.

21. PEM's fastener products and fastener installation equipment are also advertised,

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promoted, and sold through numerous national and international trade journals including: Design News; Assembly; NASA Tech Briefs; Machine Design; Design World; Electronic Component News; Fabricator; Electronic Products; Thomas Register; Global Spec; Blech; BBR; Elektronik Automotive; Automobil Produktion; Industrie et Technologies; and Ingenieurs de l'Automobile.

22. PEM takes precautionary measures to assure consumers they are getting genuine PEM fasteners including an automated catalog on PEM's website, which all authorized distributors are entitled to incorporate into their marketing and website.

23. PEM's fastener products and fastener installation equipment are also promoted and sold through independent technical representatives and its own direct sales/technical force. This includes representatives in Europe and Asia.

24. All totaled, PEM currently spends more than $1,400,000 per year advertising and promoting its marks throughout the world.

PENN ENGINEERING'S INTELLECTUAL PROPERTY RIGHTS

25. As a result of PEM's decades of innovation in the field, PEM has applied for and received many patents and trademarks protecting fastener designs and operations. The patents and trademarks are owned by PEM Management, which licenses them to PEM on an exclusive basis.

26. Because of PEM's success and goodwill, a number of PEM's competitors attempt to copy PEM products, including PEM's trademarked and patented designs. In many cases it is difficult to distinguish a genuine PEM part from an imitation part by sight alone, so some OEMs and other downstream customers are misled into purchasing products that appear to contain genuine PEM brand parts, only to subsequently discover – sometimes when the fastener fails – that the product was not a genuine PEM brand product. In some cases, OEMs and other downstream customers who have been deceived in this way fail to recognize that a defective part is not a genuine PEM brand part, to the detriment of PEM's goodwill and injury to PEM.

27. In order to counter these efforts and to enable its customers and others to identify genuine PEM Parts, PEM uses a variety of distinctive configurations in the design of its products

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and places a variety of distinctive markings on its products. Many of these configurations and markings are protected by trademarks or design patents.

28. PEM advertises its design patents and trademarks widely and encourages customers to look for these distinctive markings. As a result, customers at various levels in the industry associate the designs protected by PEM's trademarks and design patents with PEM. Thus, the OEMs that insist on genuine PEM brand parts know to look for certain distinctive fastener markings or designs in order to verify their supplier has, in fact, used genuine PEM parts.

29. Through PEM's substantial marketing and advertising efforts, PEM's Trademarks are recognized throughout the United States.

30. PEM's trademarks and the goodwill symbolized by the marks are invaluable assets of PEM as they have come to represent PEM's outstanding reputation as a producer of top qualify fastener products and fastener installation equipment.

31. For the past 69 years, PEM has continuously used and heavily promoted and advertised the mark PEM in numerous industries including: aerospace/aircraft; appliances; automobiles; compact electronics; consumer electronics; food service equipment; furniture/fixtures/signs; industrial equipment; lawn/garden equipment; lighting; marine/boating; medical; military; recreational; telecom; trucks/trailers.

32. Over the years, PEM has adopted numerous additional marks for its fastener products that incorporate the mark PEM.

33. For example, PEM advertises, promotes and sells its fastener products using the federally-registered marks listed in Table 1:

Table I

Mark	**Registration Number**	**Registration Date**	**Incontestability Date**	**Goods & Services**
PEM	732,947	6/19/1962	10/25/1984	Drill bushings and self-clinching nuts, fasteners, studs and stand-offs

PEM	1,177,822	11/17/1981	8/3/1987	Broaching-type captive fasteners-namely, broaching-type captive fasteners with internal threads, broaching-type captive standoffs with and without internal threads, broaching-type captive solder terminals, broaching-type captive studs, broaching-type captive panel fasteners and metallic inserts.
PEM	1,403,759	8/5/1986	8/12/1991	Metal fasteners
PEM	2,758,505	9/2/2003	9/2/2009	Panel fasteners, namely self-clinching, snap-in floating and hybrid panel fasteners
PEM	889,244	4/14/1970	4/14/2010	Self-clinching fasteners, self-locating weld fasteners, and self-clinching drill bushings
PEM	1,043,967	7/20/1976	11/9/1981	Presses for installing fasteners or the like and also for parts of said presses
PEM	1,092,108	7/25/1983	5/30/2015	Panel fastener assemblies and spring loaded plunger assemblies
PEM	1,113,034	2/13/1979	4/23/1984	Electrical terminals and electrical grounding stand-offs

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PEM	4,331,371	5/7/2013	n/a	Fasteners made of metal, namely, nuts, weld nuts, studs, pins, standoffs, rivets and inserts, cable-tie mounts and hooks for sheet metal; self-clinching panel fasteners made of metal or mostly of metal; panel fasteners and panel fastener assemblies made of metal or mostly of metal; sheet-metal fasteners made of metal; fasteners made of metal or mostly of metal for mounting into printed circuit boards; micro fasteners made of metal for use in the consumer electronics industry
PEMFLEX	937,397	7/11/1972	7/11/2012	Fasteners, i.e., nuts
PEMHEX	781,236	12/8/1964	12/8/2004	Fasteners
PEMSERT	883,650	1/6/1970	1/6/2010	Inserts
PEMSERTER	1,365,248	10/15/1985	6/3/1991	Power-operated presses for installing fastener
PEMSERTER MICRO-MATE	1,433,571	3/24/1987	7/2/1992	Non-powered hand presses for punching holes and installing fasteners for use in sheet metal
PEMSERTER and triangle composite	3,567,528	1/27/2009	2/9/2015	Power-operated presses for installing fasteners
PEM SP	3,270,807	7/31/2007	8/5/2013	Metal fasteners
PEM300	1,444,862	6/30/1987	10/20/1992	Sheet Metal Fasteners
AUTOPEM	4,296,186	2/26/2013	n/a	Metal fasteners, namely, nuts, bolts, screws, rivets, standoffs, clinching fasteners; metal threaded fasteners

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MICROPEM	4,250,883	11/27/2012	n/a	Metal fasteners, namely, nuts, bolts, screws, rivets, standoffs, clinching fasteners; metal threaded fasteners
AEROPEM	4,298,838	3/5/2013	n/a	Metal fasteners, namely, nuts, bolts, screws, rivets, standoffs, clinching fasteners; metal threaded fasteners
PEM SMPP	5,055,266	10/4/2016	n/a	Metal fasteners, namely, nuts
PEM VM	5,305,895	10/10/2017	n/a	Metal fasteners, namely, self-clinching fasteners, metal base plates and self-clinching fasteners pre-installed into base plates.
PEM SH	5,023,068	8/16/2016	n/a	Metal fasteners, namely, nuts
PEM SH and logo	5,023,067	8/16/2016	n/a	Metal fasteners, namely, nuts

34. A true and correct copy of the Registration Certificate of each of the above-listed marks is ***See Exhibit 3***.

35. The date on which each of the above-listed Registrations became incontestable under the Lanham Act is also listed in Table I.

36. All of PEM's registered and common law trademarks identified above are collectively referred to as the "PEM Family of Marks."

37. Each of the federal registrations for the PEM Family of Marks is owned by PEM Management, Inc. Plaintiff is the exclusive licensee of all rights in said marks and said federal registrations.

PEM's Additional Famous Trademarks

38. In addition to the PEM Family of Marks, PEM owns more than 100 other federally-registered and common law marks including the marks listed in Table II:

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Table II

Mark	Registration Number	Registration Date	Incontestability Date	Goods & Services
The "Shoulder Flare Mark"	4,037,181	10/11/2011	n/a	Metal threaded fasteners, namely, panel fasteners with heads of metal and panel fasteners with heads of metal and plastic
The "Pedestal Mark"	4,293,597	2/19/2013	n/a	Metal fasteners, namely, clinch fastener for mounting two sheets or panels in perpendicular orientation
SNAPTOP	1,418,142	11/25/1986	4/2/1992	Metal Fasteners Used To Separate And Hold Printed Circuit Boards
Square in Square product configuration	3,404,061	04/01/2008	04/01/2014	Metal floating fasteners
1,089,546 Dimpled Recess product configuration	1,089,546	04/18/1978	09/12/1983	Self-clinching studs and self-clinching pins

39. A true and correct copy of the Registration Certificate of each of the above-listed marks is also attached hereto as ***Exhibit 3***.

40. The date on which each of the above-listed Registrations became incontestable under the Lanham Act is also listed in Table II.

41. All of PEM's registered trademarks identified in Table II are collectively referred to as the "Six Other Marks."

42. Each of the federal registrations for the Six Other Marks is owned by PEM Management, Inc. Plaintiff is the exclusive licensee of all rights in said marks and said federal registrations.

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43. In addition to the PEM trademarks, Penn owns several Registered United States Patents including, Metal Pin Fastener, D768,468, and Panel Fastener, U.S. D656,392.

44. A true and correct copy of the Patents are also attached hereto as ***Exhibit 4***.

45. Each of the above-listed patents was duly issued by the U.S. Patent Office and is active and in force. Each of the above-listed patents is owned by assignment by PEM Management, Inc. Plaintiff is the exclusive licensee of all rights in said patents.

46. PEM spends more than $350,000 per year to prosecute and maintain all of the patents and trademarks in its intellectual property portfolio.

DEFENDANT'S INFRINGEMENT

47. Defendant competes with PEM in the market for fasteners. Defendant does not enjoy the same history of innovation in the industry for which PEM is known. Upon information and believe the Defendant's business is based on, at least in part, the goodwill and success of other companies like PEMCO.

47. In the 2016 Pemco Action, Defendant Pinconn, was selling numerous infringing products on its website www.pemcohardware.com and using a variety of infringing tradenames and marks including Pemco Hardware, Inc. After issuance of the preliminary injunction, the website www.pemcohardware.com was shut down.

48. It was recently discovered that Pemco has transported the contents of its previous website to a new domain name and is again adverting, displaying, offering for sale, and selling infringing products including some or all of the patents and trademarks asserted in this Complaint.

49. These websites are accessible by U.S. Customers and distributors, including those located in this District. *See e.g. (www.pinconn.com)* (copies of representative pages from this website in which infringing products are displayed are attached hereto as ***Exhibits 2 &3***).

50. The below table illustrates Defendants use of identical, counterfeit, and colorable imitations of PEM's marks:

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PEM's Registered Marks	Image of Defendant's Infringing Usage	Details of Defendant's Infringing Usage
PEM 732,947 1,177,822 PEM Family of Marks 1,403,759 2,758,505 781,236 883,650 889,244 1,043,967 1,092,108 1,113,034 4,331,371 937,397 1,365,248 1,433,571 1,444,862 3,270,807 3,567,528 4,296,186 4,250,883 4,298,838 PENN ENGINEERING 928,124	PEMCO PEMCO HARDWARE PEMCO FASTENING SYSTEMS PEMKU SHENZHEN PEMCO FASTENING SYSTEM CO, LTD. DONGGUAN FENGGANG PEMCO HARDWARE FACTORY www.pemcomfg.com www.pemku.com PENNENGINEERING PEM www.pemnet.com PINCONN DONGGUAN FENGGANG PINCONN HARDWARE FACTORY www.pinconn.com	Use as a header and a watermark on numerous web pages – Attached hereto as ***Exhibit 5*** Use on "Company News" of website - Attached hereto as ***Exhibit 6*** Use as a header on numerous web pages –***Exhibit 5*** Use on home page with link to "Pemku Home" – ***Exhibit 6*** Use as a header and watermark on numerous web pages – ***Exhibit 5*** Use as the owner of ISO certification shown on website – ***Exhibit 2*** Use as a watermark on numerous web pages – ***Exhibit 5***, Use as a watermark on numerous web pages – ***Exhibit 5***, Use as footer on multiple web pages attached hereto as ***Exhibit*** *7*, Use in multiple web pages ***Exhibits*** *7*, ***8*** Use as footer on multiple web pages ***Exhibit*** *7*, Use as a header and a watermark on numerous web pages - ***Exhibit 5*** Use as a footer, header and a watermark on numerous web pages - ***Exhibit 5*** Use as a domain same and on multiple web pages – ***Exhibit 6***

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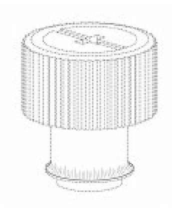
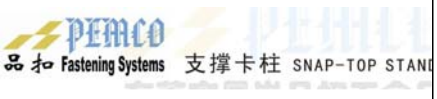
U.S. 4,037,181 Shoulder Flare product configuration 		Attached hereto as ***Exhibit 9*** http://www.pinconn.com/Category/B03/ 1) Assembly Parts/Panel Fastener Assembly/Flare-in with Flange – www.pinconn.com/category/B0301/ 2) Assembly Parts/Panel Fastener Assembly/Panel Fastener Assembly - http://www.pinconn.com/Product/List/B0316/ (also covered by US Patent D656,392) 3) Assembly Parts/Panel Fastener Assembly/Self-Clinching with Plastic Head - http://www.pinconn.com/Product/List/B0332/
The "Pedestal Mark"		Attached hereto as ***Exhibit 10*** http://www.pinconn.com/Category/A01/ Turning Parts/Nuts/Threaded Right Angle Nuts http://www.pinconn.com/Product/List/A0121/
Reg. No. 1,418,142 SNAPTOP		Attached hereto as ***Exhibit 11*** http://www.pinconn.com/Category/A03/ Turning Parts/Pins and others/Snap-top Standoffs http://www.pinconn.com/Product/List/A0306/

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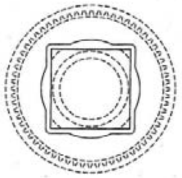
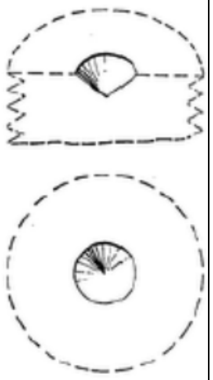
Reg. No. 3,404,061 Square in Square product configuration 		Attached hereto as ***Exhibit 12*** http://www.pinconn.com/Category/A01/ Turning Parts/Nuts/Floating Nuts - http://www.pinconn.com/Product/List/A0105/
Reg. No. 1,089,546 Dimpled Recess product configuration 		Attached hereto as ***Exhibit 13*** http://www.pinconn.com/Category/D/ http://www.pinconn.com/Category/D01/ Cold Forming Parts/Self-clinching Studs/Flush-mounted Studs http://www.pinconn.com/Product/List/D0101/ bottom pic Cold Forming Parts/Self-clinching Studs/High-Strength Studs HFE - http://www.pinconn.com/Product/List/D0103/ Cold Forming Parts/Self-clinching Studs/High-Strength Studs HFH - http://www.pinconn.com/Product/List/D0104/ our bulletin Cold Forming Parts/Self-clinching Studs/High-Strength Studs HFG8 - http://www.pinconn.com/Product/List/d0105/ top pic Cold Forming Parts/Self-clinching Studs/Low-Displacement Head Studs - http://www.pinconn.com/Product/List/D0107/ our bulletin Cold Forming Parts/Self-clinching Studs/Unthreaded Studs - http://www.pinconn.com/Product/List/D0108/ our bulletin Cold Forming Parts/Self-clinching Studs/Dog-Point Studs - http://www.pinconn.com/Product/List/D0111/ our bulletin

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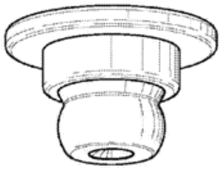
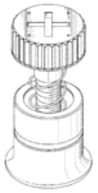
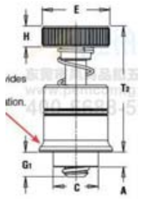
51. The below table illustrates Defendants use of identical, counterfeit, and colorable imitations of PEM's design patents:

Penn Engineering's U.S. Patent	**Exemplary Photograph of Patented Product**	**Pinconn's Infringing Product**
Title: Metal Pin Fastener D768,468		Attached hereto as ***Exhibit 14*** Turning Parts/Pins and Others http://www.pinconn.com/Categor
Title: Panel Fastener U.S. D656,392		Attached hereto as ***Exhibit 15***  http://www.pinconn.com/Category/B03/ Assembly parts/Panel Fastener ssembly/Flare-in with Flange

52. To promote its fasteners, Defendant has also participated in trade shows held in the United States for the fastener industry.

53. Defendant has come to the he International Fastener Expo held at the Las Vegas Convention Center October 17-20, 2017, with the purpose and intent of advertising, displaying, offering for sale, and selling products for sale (many of which are listed above) which infringe upon Plaintiff's trademark and patent rights, as seen in the photo below.

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54. Defendant has taken PEM's marks and patents and used the same to create products which infringe on Plaintiff's intellectual property.

FIRST CAUSE OF ACTION
TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114

55. Plaintiff hereby re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

56. Without PEM's authorization, license, or consent, Defendant has knowingly used and continues to use PEM's marks in connection with the manufacturing, advertising, promoting, import, and sale of infringing products. Defendant has used the PEM marks with the knowledge of, and the intent to call to mind and create a likelihood of confusion with regard to, and/or trade of PEM's fame and the registered PEM marks.

57. Defendant's use of the PEM marks is likely to: (A) confuse, mislead, or deceive

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customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of Defendant and PEM and/or the infringing products; and (B) is likely to cause such people to believe in error that the infringing fastener products and fastener installation equipment have been authorized, sponsored, approved, endorsed, or licensed by PEM or that the infringing fastener products and fastener installation equipment are in some way affiliated with PEM.

58. PEM has no control over the Defendant's use of the PEM marks and cannot control the fact that the Defendant is using the PEM marks to create the infringing fastener products and fastener installation equipment. Therefore, PEM's reputation and goodwill has been and continues to be damaged – and the value of the PEM Marks jeopardized – by Defendant's continued use of the PEM marks and colorable imitations thereof. Because of the likelihood of confusion between the infringing fastener products and fastener installation equipment, any defects, objections, or faults found with the fastener products and fastener installation equipment will negatively reflect upon and injure the exceptional reputation that PEM has established for its products and services in connection with the PEM mark. As such, Defendant is liable to PEM for infringement of the PEM marks pursuant to 15 U.S.C. § 1114.

59. Defendant's acts alleged have caused, and if not enjoined will continue to cause, irreparable and continuing harm to PEM's trademarks, business, reputation, and goodwill.

60. As a direct and proximate result of Defendant's conduct, PEM has suffered and continues to suffer damages to its valuable PEM marks, and other damages in an amount to be proven at trial.

61. Defendant's infringement of PEM's registered trademarks is deliberate, willful, fraudulent and without any extenuating circumstances, and constitutes a knowing use of the PEM marks, and an exceptional case within the meaning of 15 U.S.C. § 1117(b).

62. PEM is entitled to temporary, preliminary, and permanent injunctive relief, as well as an award of Defendant's profits, actual damages, enhanced profits and damages, costs, and reasonable attorney's fees pursuant to 15 U.S.C. §§ 1114, 1116, and 1117.

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SECOND CAUSE OF ACTION
FALSE DESIGNATION OF ORIGIN/UNFAIR COMPETITION – 15 U.S.C. § 1125

63. Plaintiff hereby re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

64. Defendant's use, promotion, offers to sell, sale, and/or importation of the infringing fastener products and fastener installation equipment violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). The PEM Marks are federally registered, and are entitled to protection under both federal and common law. The PEM Marks have distinctive appearances with unique and non-functional designs. PEM has extensively and continuously promoted and used the PEM Marks for many decades in the United States and worldwide. Through that extensive and continuous use, the PEM Marks have become well-known indicators of the origin and quality of PEM's products and have acquired substantial secondary meaning in the marketplace.

65. Defendant's use of colorable imitations of the PEM Marks constitutes a false designation of origin that is likely to cause consumer confusion, mistake, or deception as to the origin, sponsorship, or approval of the infringing fastener products and fastener installation equipment by creating the false and misleading impression that the infringing fastener products and fastener installation equipment are manufactured by, authorized by, or otherwise associated with PEM.

66. Defendant's use of colorable imitations of the PEM Marks has caused, and unless enjoined, will continue to cause substantial and irreparable injury to PEM for which PEM has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the PEM Marks.

67. On information and belief, Defendant's use of colorable imitations of the PEM Marks has been intentional and willful. Defendant's bad faith is evidenced at least by Defendant's use of marks identical to the PEM Marks on the infringing fastener products and fastener installation equipment. PEM is entitled to injunctive relief, and PEM is also entitled to recover Defendant's profits, actual damages, enhanced profits and damages, costs, and

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reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1125(a), 1116, and 1117.

THIRD CAUSE OF ACTION
COMMON LAW TRADEMARK INFRINGEMENT & UNFAIR COMPETITION

68. Plaintiff hereby re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

69. PEM was the first to use the PEM Marks. As a result of PEM's continuous promotion and sales of products bearing the PEM Marks, the PEM Marks have become widely known and PEM has been identified in the public mind as the manufacturer of the products to which the PEM Marks are applied.

70. As a result of the experience, care, and service of PEM in producing the products to which the PEM Marks are applied, these products have become widely known and have acquired a worldwide reputation for quality, styling, and utility. Moreover, the PEM Marks have come to symbolize PEM's reputation for quality and excellence. The PEM Marks have also acquired secondary meaning in the marketplace, and are non-functional.

71. The Defendant, with knowledge of and with intentional disregard of PEM's rights, continues to advertise, promote, and sell products using the PEM Marks, or colorable and confusing imitations thereof. Defendant's acts are likely to cause, have caused, and will continue to cause confusion as to the source and/or sponsorship of PEM's products and services.

72. The Defendant's acts alleged herein and specifically, without limitation, Defendant's use, manufacture, promotion, offers to sell, selling, and/or importing into the United States products that are confusingly similar to products bearing the PEM Marks, infringes PEM's exclusive trademark rights in violation of the common law.

73. The Defendant's acts alleged above have caused, and if not enjoined will continue to cause, irreparable and continuing harm to PEM's trademarks, business, reputation, and goodwill. PEM has no adequate remedy at law because monetary damages are inadequate to compensate PEM for the injuries caused by Defendant to its trademarks, business, reputation, and goodwill.

74. Defendant's use of colorable imitations of the PEM Marks has been intentional

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and willful. Defendant's bad faith is evidenced at least by Defendant's use of marks identical to the PEM Marks on the Defendant Infringing Products. PEM is entitled to injunctive relief, and PEM is also entitled to recover Defendant's profits, actual damages, punitive damages, costs, and reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

DESIGN PATENT INFRINGEMENT - 35 U.S.C. §§ 171 AND 289

75. Plaintiff hereby re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

76. Without Plaintiff's authorization, license, or consent, the Defendant has and is continuing to make, use, offer to sell, sell, and/or import into the United States the Defendant Infringing Products, which infringe the Plaintiff's design patents USD 459,432 S1, USD 459,433 S1, and USD 644,716 S1.

77. The Defendant infringes on the Plaintiff Design Patents, USD 459,432 S1, USD 459,433 S1, and USD 644,716 S1 because, *inter alia,* in the eye of an ordinary observer, giving such attention as a purchaser usually gives, the Plaintiff's Design patents are substantially the same as the Defendant's infringing product. The resemblance is as such that an ordinary observer, would likely purchase the Defendant's infringing products, believing it to be the Plaintiff's products.

78. The Defendant's acts of infringement of the Plaintiff's Design Patents were undertaken without authority, permission, or license from the Plaintiff. The Defendant's acts violate 35 U.S.C. § 271.

79. The Plaintiff has been and continues to be irreparably harmed by the Defendant's past and ongoing infringement of the Plaintiff's design patents.

80. The Defendant's infringement of the Plaintiff's design patents has caused The Plaintiff to suffer damages in an amount to be determined at trial.

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully demand judgment against Defendant as follows:

A. Judgment that Defendant has: (i) willfully infringed the PEM Marks in violation of 15 U.S.C. § 1114; (ii) willfully used false designations of origin and/or engaged in unfair competition in violation of 15 U.S.C. § 1125(a); (iii) willfully violated PEM's common law rights in the PEM Marks; and (iv) willfully infringed the Plaintiff's Design Patents in violation of 35 U.S.C. §§ 171 and 289;

B. A temporary, preliminary, and permanent injunction against further infringement, false designation of origin, and unfair competition directed against the PEM Marks and Design Patents by Defendant, its agents, servants, employees, attorneys, and all others in active concert or participation with any of them;

C. An order, pursuant to 15 U.S.C. § 1116(d) and the Court's inherent authority, directing the seizure of all evidence of Defendant's unlawful conduct;

D. A finding that this is an exceptional case within the meaning of 15 § U.S.C. 1117(a);

E. An award of damages adequate to compensate PEM for the trademark infringements that have occurred pursuant to 15 U.S.C. § 1117(a), which amount shall include Defendant's profit's, PEM's damages, and the costs of the action;

F. At PEM's election, either: (1) an award of damages adequate to compensate PEM for the intentional acts of trademark counterfeiting that have occurred, pursuant to 15 U.S.C. § 1117(b), which amount shall include three times of Defendant's profits or PEM's damages (whichever is greater), together with reasonable attorneys' fees; or (2) statutory damages in the amount of: (i) not less than $1,000 or more than $200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the Court considers just; or (ii) if the Court finds that the use of the counterfeit mark was willful, not more than $2,000,000 per counterfeit

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mark per type of goods or services sold, offered for sale, or distributed, as the Court considers just;

G. An award of damages adequate to compensate the Plaintiff for the patent infringements that have occurred pursuant to 35 U.S.C. § 284, or an award of the Defendant's profits from its infringements pursuant to 35 U.S.C. § 289, whichever is greater, together with prejudgment interest and costs; and

H. Such other and further relief as this Court deems just and proper.

Dated October 18, 2017

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/s/ Steven A. Caloiaro

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